

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 08-61707

STEVEN DENNIS BOUGHNER, and
DIANE ELIZABETH BOUGHNER,

Chapter 13

Judge Thomas J. Tucker

Debtors.

**ORDER DENYING, WITHOUT PREJUDICE, DEBTORS' MOTION TO ALLOW THE
ILLINOIS FRIEND OF THE COURT TO FILE A LATE FILED PROOF OF CLAIM**

This case is before the Court on Debtors' motion entitled "Motion to Allow the Illinois Friend of the Court to File a Late Filed Proof of Claim," filed August 25, 2009 (Docket # 44, the "Motion"). The Motion seeks an order permitting the Illinois Friend of the Court to file a late proof of claim, or alternatively, "the ability to file a Plan Modification to decrease plan payments and pay the Illinois Friend of the Court directly." Debtors filed a Certificate of No Response on September 14, 2009, stating that no one had filed an objection to the Motion (Docket # 46).

The Court must deny the Motion, without prejudice as stated below. The enlarging of the time for *the creditor* to file a proof of claim, as requested by the Motion, is not permitted, under the combination of Fed.R.Bankr.P. 9006(b)(3), 3002(a), and 3002(c).

Under Fed.R.Bankr.P. 3002(a), with exceptions not applicable here, in a Chapter 13 case "[a]n unsecured creditor . . . must file a proof of claim . . . for the claim . . . to be allowed[.]" A non-governmental unsecured creditor in a Chapter 13 case must file a proof of claim "not later than 90 days after the first date set for the meeting of creditors under § 341(a) of the Code" for the claim to be timely filed. A governmental unit must file a proof of claim "not later than 180 days after the order for relief." Fed.R.Bankr.P. 3002(c) and (c)(1). The Motion alleges that this latter deadline expired on April 12, 2009. *See* Motion ¶ 4.

Fed.R.Bankr.P. 9006(b)(3) permits the Court to enlarge the time for taking action under Fed.R.Bankr.P. 3002(c) “only to the extent and under the conditions stated in” that rule. Fed.R.Bankr.P. 3002(c), in turn, does not permit the enlargement of time *for the creditor* to file a proof of claim in this case.

However, when the creditor in this case failed to file a timely proof of claim, the Debtors (who are making this Motion now) and the Chapter 13 trustee each had 30 days to file a proof of claim on behalf of the creditor. *See* Fed.R.Bankr.P. 3004. But no such proof of claim was filed, and it appears that the 30-day deadline expired several months ago.

This does not necessarily end the matter, however. While Rule 9006(b)(3) precludes the Court from enlarging the long-expired time for *the creditor* to file a proof of claim in this case, it does not bar the Court from enlarging *the Debtors’* deadline for filing a proof of claim on behalf of the creditor, under Rule 3004. Thus, Debtors may file a motion for enlargement of that deadline, if they wish, under Fed.R.Bankr.P. 9006(b)(1). But any such motion must show that the failure of Debtors to timely file a proof of claim on behalf of this creditor — *i.e.*, to do so no later than 30 days after the creditor’s own deadline expired as required by Rule 3004 — “was the result of excusable neglect.” *See* Fed.R.Bankr.P. 9006(b)(1), subsection (2). The current Motion makes no attempt to make such a showing.

The alternative relief requested by the Motion cannot be granted at this point either. That aspect of the Motion seeks, alternatively, “the ability to file a Plan Modification to decrease plan payments and pay the Illinois Friend of the Court directly.” But Debtors have filed no plan modification, so the alternative relief requested is premature. The Court cannot give an advisory opinion about a plan modification that has not even been filed yet. The Court therefore denies

the alternative relief, without prejudice, and expresses no further view at this time regarding the merits of the Debtors' alternative request for relief. Debtors must file a proposed Plan modification for that matter to be properly before the Court.

Accordingly,

IT IS ORDERED that the Motion (Docket # 44), is DENIED, without prejudice to the Debtors' right to file either of the following: (1) a motion by Debtors for enlargement of the deadline for Debtors to file a proof of claim on behalf of the Illinois Friend of the Court under Fed.R.Bankr.P. 3004, based on a showing of "excusable neglect" under Fed.R.Bankr.P. 9006(b)(1); or (2) a proposed plan modification.

Signed on September 15, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge